IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13/02/2003

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The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice K. RAVIRAJA PANDIAN

W.P. No.17138 OF 2001

A.M. Basheer Ahmed ..... Petitioner

-Vs-

1. The Director
Vector Control Research Centre (VCRC)
Indian Council Medical Research
Indira Nagar Medical Complex
Pondichery

2. G. Meganathan

3. The Central Administrative Tribunal
Madras Bench, Chennai, rep. by
its Registrar ..... Respondents

Petition under Art.226 of the Constitution of India
praying for a Writ of Certiorarified Mandamus
as stated in the petition

For Petitioner :: Mr. K. Chandru, Senior
Counsel for Mrs. G. Thilakavathy

For Respondents :: M. Jayaraman

:ORDER

(Order of the Court was made by V.S. SIRPURKAR, J.)

Petitioner herein, who, at the relevant time, was working as a
Lab Assistant in Vector Control Research Centre, Pondichery (in short VCRC),
has come before us feeling aggrieved by the dismissal of his original
application, O.A. No.447 of 1999. The facts are slightly complicated.

2. The petitioner joined his services in the year 1981 as a
Lab Assistant. He continued to be in that post. There was an advertisement
by way of a notification dated 23-4-1999 for the post of Lab Technician, which

was a promotion post for the Lab Assistants also. At that time, fifty per cent of the posts of Lab Technician were supposed to be filled in by recruitment of candidates from the open market while the remaining posts were to be filled in by promotion. The petitioner did not wait for the selection committee to commence any exercise and straight away challenged the said notification dated 23-4-1999 vide O.A. No.447 of 1999 on the sole ground that it was incumbent upon the authorities to fill up this posts only by way of promotion and not from the open market. He then claimed that he, being the seniormost, was bound to be promoted to that post.

3. When the aforesaid original application came for hearing somewhere in the month of June, 2001, the Department had pointed out that the selection process, which was initiated by the notification dated 2 3-4-1999 had progressed further and had resulted into the selection of one Meghanathan, who is joined here as the second respondent. In his original application, the petitioner had also prayed for the stay of the further selection process but, it seems that there was no stay order passed by the Tribunal with the result, the selection process went further and the second respondent herein was selected. Though this was a selection from the open market, the department candidates were also allowed to take part in the selection process and very strangely, even the petitioner had joined the fray and had offered himself for being selected. Perhaps Meghanathan was found better than the petitioner and that is why Meghanathan came to selected and the petitioner was rejected. This selection came to be made on 15-11-1999.
It was therefore clear that O.A. No.447 of 1999 had become infructuous and should have been disposed of as such.

4. Petitioner also filed another original application, O.A. No.852 of 2001, in which the petitioner had claimed that the Selection Committee itself was not properly constituted and that Meghanathan could not have been selected because he was already selected somewhere in the year 1997 and was promoted as such to the post of Lab Technician. In short, the contention of the petitioner in O.A. No.852 of 2001 was that though the authorities had shown that they had selected a person to fill up a post which was to be filled up from the open market, they had surreptitiously transferred that post and offered to Meghanathan a post which was to be filled up by promotion. In this, probably, the contention was that since the petitioner was senior to Meghanathan, he alone could have been promoted to the post of Lab Technician.

5. The Tribunal disposed of O.A. No.447 of 1999 by its judgment dated 11-6-2001. We are slightly surprised by the order of the Tribunal because the scope of O.A. No.447 of 1999 was very limited. The only question that was raised in that original application was as to whether the Department could fill up the post of Lab Technician from the open market or was it incumbent upon the Department to fill up the said post only by promotion. However, the Tribunal went beyond this question after holding that the Department was perfectly justified in inviting the applications from the open market. The Tribunal also recorded a finding that the selection of Meghanathan was perfectly justified, that the selection committee had conducted itself properly and within the rules and that there was no trace of

mala fides in the whole selection process. Perhaps, because of this extension of the scope of the O.A. No.447 of 1999, when the matter came up before the Tribunal in O.A. No.852 of 2001, challenging the selection of Meghanathan on account of the defective selection committee and other grounds, the Tribunal observed that it had already decided all those questions while disposing of O.A. No.447 of 1999 and it, therefore, permitted the withdrawal of the original application, O.A. No.852 of 2001. It is thereafter that the petitioner came before us challenging the order passed by the Tribunal in O.A. No.447 of 1999.

6. Learned senior counsel, Mr. K. Chandru, appearing for the petitioner argued before us that in the first place, there was no justification for the Department to fill up the post of Lab Technician from the open market. We are not convinced on that question at all. There does not seem to be any impediment in the way of the Department to fill up the post from the open market and there was no material shown before us or before the Tribunal to suggest that the Department had to fill up the post of Lab Technician by way of promotion only. The contention, therefore, must be rejected and has been rightly rejected by the Tribunal. The Tribunal has noted that earlier to 2000, there were actually no rules and it was left to the discretion of the Director of the VCRC and there was a convention that fifty per cent of the posts used to be filled up by way of promotion while the rest of the posts used to be filled up from the open market by direct recruitment. No material was produced even before the Tribunal to suggest as to why it was incumbent upon the Department not to invite the applications from the open market for filling up this particular post of Lab Technician. In the absence of any material shown before the Tribunal and before us also, we are unable to accept the contention raised by the learned counsel that it was a must for the Department to fill up the concerned post only by way of promotion and not from the open market.

7. The second contention raised by the learned counsel was that the Department has surreptitiously granted promotion to Meghanathan and has converted the post of Lab Technician as the □promoted post□ from a □selection post□. Mr. Jayaraman, learned counsel for the Department invites our attention to the order of appointment of Meghanathan. He points out that it is not as if Meghanathan was shown against a promoted post. He points out that had that been so, Meghanathan would not have been required to be placed on probation for a period of two years from the date of his appointment. When we scanned the order closely, the language thereof suggests that Meghanathan was □ offered an □appointment□ to the post of Laboratory Technician□ and that he was placed on probation for a period of two years. This itself is sufficient to suggest that Meghanathan□s selection is for the post meant to be filled from the open market and not against the promotion post. Learned senior counsel, however, invites our attention to entry No.21 in the Office Memorandum No.VCRC/ADMN-I/PF/1171 dated 17-01-2001 and points out that there the name of Meghanathan is mentioned and his pay has been raised to Rs.4400/- with effect from 1-1-1996 in the higher scale. He points out that in the remarks column the following entry appears:
□Promoted to the post of Lab Technician from 1-5-1997.□
Learned senior counsel points out that this suggests that Meghanathan who was

selected on 15-11-1999 is shown to be a person who has been promoted with effect from 1-5-1997 and in that the vacancy meant for the promotion channel has been exhausted. That is obviously incorrect. Mr. Jayaraman, learned counsel for the Department explains that Meghanathan was given an ad hoc promotion on 1-5-1997 and it was not in the nature of a regular promotion and, therefore, he could compete for the selection initiated by the Department vide advertisement dated 23-4-1999 which he ultimately did. Mr. Jayaraman also points out that even the petitioner himself was given such ad hoc promotion and later on his pay was also protected. He also tried and offered himself for the selection and was ultimately was not selected. All this clearly goes to suggest that there is no question of showing Meghanathan as against the promoted post and that the promoted post still remains in tact (if it has already not been filled up by promotion). All this suggests that the petition has absolutely no merits. But, before parting with the judgment, we must mention that if O.A. No.447 of 1999 was restricted only to one question then, there was no justification the Tribunal going beyond the scope of the original application and to examine the whole process of selection. In fact, if the Tribunal had not granted stay to the selection process then, the subsequent selection made by the respondent Board vide order dated 15-11-1999 had to naturally result in O.A. No.447 of 1999 becoming infructuous. It should have been disposed of straight away as an infructuous petition. Again, we do not understand as to why O.A. No.852 of 2001 was allowed to be withdrawn merely because the points stated in that original application were considered in O.A. No.447 of 1999. In our opinion, the points raised in O.A. No.852 of 2001, which were not raised originally in O.A. No.447 of 1999, could not have been considered while considering that application at all. Be that as it may, since the matters have now come before us, we have disposed them of in the light of the circumstances stated above.

8. The writ petition has no merits. It is dismissed but without any orders as to the costs. W.M.P. Nos.25355 and 25356 of 2001 are closed.

Index:Yes
Website:Yes

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